

1 DAVID LIEBRADER, ESQ. SBN 5048
2 THE LAW OFFICE OF DAVID LIEBRADER
3 601 S. RANCHO DR. STE. D-29
4 LAS VEGAS, NV 89106
5 Ph: (702) 380-3131
6 DaveL@investmentloss.com
7 Attorney for Plaintiff

8 UNITED STATES BANKRUPTCY COURT
9 DISTRICT OF NEVADA

10 IN RE:) In Re: Case No 18-12951-leb
11 Virtual Communications Corporation,) Chapter 11
12 Debtor,) Adv. No.
13 _____)
14 Reva Waldo,) **COMPLAINT OBJECTING TO**
15 Plaintiff) **DISCHARGEABILITY OF**
16 vs.) **DEBT** [11 U.S.C. §523(a)(19);
17 Virtual Communications Corporation,)
18 Defendant)
19 _____)

20 COMES NOW Creditor Reva Waldo (hereafter "Plaintiff") and alleges as follows:

21 PRELIMINARY INFORMATION

- 22 1. Defendant Virtual Communications Corporation (hereinafter "Defendant") is the
23 Debtor in this Chapter 11 proceeding under Title 11 of the United States Code, Case 18-
24 12951.
25 2. Plaintiff Reva Waldo ("Plaintiff") is an 80 year old woman residing in Bainbridge, OH.
26 3. Debtor - Defendant Virtual Communications Corporation ("VCC") is a Nevada
Corporation with a principal place of business in Las Vegas, Nevada.

1 4. Debtor filed its Chapter 11 case on May 22, 2018.

2 5. The court has jurisdiction to hear his case pursuant to 28 U.S.C. §1334. This action is a
3 core proceeding over which this court has jurisdiction under 28 U.S.C. §157(b) (1).

4 Venue is proper and convenient in the United States Bankruptcy Court for the District of
5 Nevada pursuant to 28 U.S.C. §1408 et. seq.

6 6. Prior to commencing this adversary proceeding, Plaintiff obtained a summary judgment
7 against Debtor in Dept. 30 of the Clark County District Court in an action against VCC
8 (Waldo v. VCC et al., case A-15-725246). That matter is set for trial against the
9 remaining Defendants for June 25, 2018. In addition to the order granting summary
10 judgment, the Court also found on Plaintiff's behalf on a motion for summary adjudication
11 (primarily of issues related to Nevada Securities Act violations). See Exhibit "A",
12 attached.

13 7. In the Order, Clark County District Court Judge Tim Williams found that Debtor's sale
14 of a promissory note to Plaintiff was made in violation of the Nevada' Securities Laws as
15 it was an unregistered security.

16 8. Based upon these findings, and other facts to be introduced in the course of this
17 adversary proceeding, Plaintiff contends that her claim against VCC is not dischargeable.

18 FACTS

19 9. The underlying Clark County District Court action was for the recovery of investment
20 losses. The investment at issue is an unregistered security issued by Virtual
21 Communications Corporation as part of an offering of securities undertaken by VCC
22 between 2012-2014. The investments are hereafter referred to as the "VCC Notes" or
23 "Note".
24
25
26

1 10. The VCC Note sold to Plaintiff takes the form of a 9% promissory note with a term of
2 18 months (renewable for an additional 6 months). Plaintiff purchased the Note on April
3 17, 2014 for \$111,000 and was paid interest by VCC until January, 2015 when VCC went
4 into default. Plaintiff provided notice of default to VCC, and demanded repayment of
5 principal, interest and attorney's fees as provided for under the Note terms. When VCC
6 failed to meet its obligations, Plaintiff filed suit in Clark County District on September 28,
7 2015.

8 11. The matter was litigated, discovery was propounded and depositions taken, including
9 the deposition of Plaintiff and VCC's Chairman, Ronald Robinson. Trial is presently set
10 for June 25, 2018 against Mr. Robinson and another Defendant. Three months prior to
11 trial Plaintiff filed motions for summary judgment and summary adjudication of issues
12 against VCC as to whether VCC was in default under the terms of the promissory note,
13 and whether VCC sold securities in violations of the Nevada Securities Act.

14 12. Judge Williams heard oral argument on two occasions on these issues, and on April
15 10, 2018 issued his ruling. Afterwards, findings of fact and conclusions of law were
16 prepared, which were approved by VCC's counsel, and submitted to Judge Williams for
17 signature. His order was signed, and filed with the clerk on May 3, 2018. See Exhibit "A"
18 attached.

19 13. Among the Nevada Securities Act findings made by Judge Williams was that the VCC
20 Note was an unregistered security sold in violation of Nevada law, and that VCC CEO
21 Ronald Robinson was a control person. VCC's sale of the unregistered security to
22 Plaintiff is the basis for a denial of discharge based on 11 U.S.C. § 523(a)(19).

23 FIRST CAUSE OF ACTION
24
25
26

To Deny Dischargeability of Debt under 11 U.S.C. §523(a) (19)

14.Plaintiff repeats and repleads paragraphs 1 through 13, inclusive and by this reference incorporates them herein.

15. 11 USC § 523(a)(19) provides:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title [11 USC § 727, 1141, 1228(a), 1228(b), or 1328(b)] does not discharge an individual debtor

from any debt--

(19) that--

(A) is for--

(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 USC §78c(a)(47)]), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

(B) results, before, on, or after the date on which the petition was filed, from--

(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

(ii) any settlement agreement entered into by the debtor; or

(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

1 58. The VCC Note sold to Plaintiff was a security under Nevada law.

2 59. The VCC Note was not registered, nor exempt from registration under the laws of the
3 state of Nevada. Therefore, for purposes of compliance with Nevada state law, VCC sold
4 unregistered securities to Plaintiff, who is entitled to damages under NRS 90.660.

5 61. That on May 3, 2018, Plaintiff obtained a summary adjudication of issues after full
6 briefing and oral argument with a finding that the VCC Note sold to her was an
7 unregistered security sold in violation of the Nevada Securities Act, specifically NRS
8 90.460 and 90.660.

9 62. Such debt owed from Defendant to Plaintiff is non-dischargeable pursuant to 11
10 U.S.C. §523(a) (19) of the Bankruptcy Code.

11 ///

12 WHEREFORE Plaintiff prays for Judgment against Defendant as follows:

- 13 1. That the debt owed by Defendant to Plaintiff totaling in excess of \$195,000 as
14 of the date of this filing, plus interest thereon be determined non-dischargeable
15 pursuant to 11 U.S.C. §523 (a)(19).
- 16 2. That Plaintiff's claim is valid, and can be enforced against any property
17 belonging to VCC, and that such debt is not discharged.
- 18 3. For costs of suit.
- 19 4. For such other and further relief as this court may deem just and proper.

20 Dated: May 23, 2018

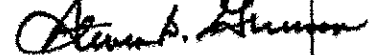
Respectfully submitted,

21 By: s//: David Liebrader

22 David Liebrader
23 Attorney for Plaintiff
24
25
26

EXHIBIT “A”

Electronically Filed
5/3/2018 1:49 PM
Steven D. Grierson
CLERK OF THE COURT



DAVID LIEBRADER, ESQ.
STATE BAR NO. 5048
THE LAW OFFICES OF DAVID LIEBRADER, APC
601 S. RANCHO DR. STE. D-29
LAS VEGAS, NV 89106
PH: (702) 380-3131
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER BETWEEN

) Case No. A-15-725246

Reva Waldo,

) Dept.: 16

PLAINTIFF,

) ORDER ON:

v.

) 1. PLAINTIFF'S MOTION
) FOR SUMMARY
) JUDGMENT

Ronald J. Robinson, Virtual Communications
Corporation, Retire Happy, LLC, Julie Minuskin
and DOES 1-10 and ROES 1-10, inclusively

) 2. PLAINTIFF'S MOTION
) FOR SUMMARY
) ADJUDICATION

DEFENDANTS

) 3. DEFENDANTS'
) MOTION TO DISMISS
) FOR FAILURE TO
) NAME INDISPENSIBLE
) PARTIES
) 4. DEFENDANT DAVIS'
) MOTION TO DISMISS

ORDER ON MOTIONS

The following motions were considered by the court:

1. Plaintiff's motion for summary judgment against Defendant Virtual Communications Corporation;
2. Plaintiff's motion for summary adjudication of issues;
3. Defendants Virtual Communications Corp., Alisa Davis and Ronald Robinson's counter motion to dismiss Plaintiff's complaint for failure to name indispensable parties;
4. Defendant Alisa Davis' motion to dismiss/motion for summary judgment/motion for

APR 16 2018

1 judgment on the pleadings.

2 The four motions were the subject of two hearings; one on March 8, 2018, the second
3 on April 5, 2018. Appearing for Plaintiff was David Liebrader; appearing for Defendants was
4 Harold Gewerter.

5
6 FINDINGS OF FACT; CONCLUSIONS OF LAW

7 After considering the briefs, oppositions, replies and supporting Declarations
8 submitted, as well as argument by counsel at the two hearings, the Court rules as follows:



- 9 1. Plaintiff entered into a valid, binding contract with Defendant Virtual
10 Communications Corporation. Based upon the sworn testimony of VCC's officers
11 Ronald Robinson and Vernon Rodriguez, VCC acknowledged that it is in default
12 under the terms of the promissory note. As a result Plaintiff's motion for summary
13 judgment against VCC is GRANTED.
- 14 2. Plaintiff raised the following issues in her motion for summary adjudication; (a) that
15 the VCC note is a security; (b) that the VCC Note was not registered nor exempt from
16 registration; (c) that VCC employed an unlicensed broker dealer to sell the VCC
17 Notes; and (d) that Ronald Robinson is a control person under the Nevada Securities
18 Act. Based upon the authorities cited by Plaintiff in her motion for summary
19 adjudication, including NRS 90.295 and State v. Friend, 40 P. 3d 436; 118 Nev. 115
20 (2002) and the certification from the Nevada Secretary of State, the Court Orders that
21 Plaintiff's motion for summary adjudication on the four issues raised is GRANTED.
- 22 3. Defendants' motion to dismiss for failure to name an indispensable party, specifically
23 Provident Trust Group was the subject of extensive briefing. In addition to the motion,
24
25
26

1 opposition and reply the court also asked for and received supplemental briefing from
 2 the parties, as well as out of jurisdiction authorities lodged with the court by Plaintiff.
 3 The issue of whether a self-directed IRA Custodian is a necessary party such that the
 4 Plaintiff lacks standing to sue is an issue of first impression in Nevada. Based upon
 5 the filings the Court finds that Provident Trust owed limited duties to Plaintiff and did
 6 not direct, consent, approve or disapprove of Plaintiff's investment decisions in the
 7 self-directed account. Instead, it was Plaintiff, the owner of the Provident Trust Group
 8 custodial account who managed, directed and controlled the investments. See FBO
 9 David Sweet IRA v. Taylor, 4 F. Supp. 3d 1282 (E.D. Ala. 2014). Because Plaintiff
 10 was the sole decision maker on the account, and Provident Trust Group expressly, by
 11 contract, declined to undertake any action to pursue remedies for default on the
 12 investment, the Court finds that Provident Trust Group is not a necessary or
 13 indispensable party and on the basis DENIES Defendant's motion.

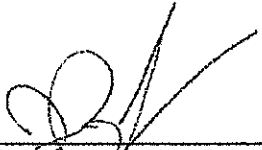
- 14 4. The Court considered Defendant Alisa Davis' motion for summary judgment/motion
 15 to dismiss/motion for judgment on the pleadings. The Court finds that Plaintiff has
 16 plead sufficient material facts, including offering the sworn deposition testimony of
 17 Ronald Robinson that contradicts the contentions raised in Davis' motion. Because
 18 Ms. Davis' motion is contradicted by the sworn testimony of Mr. Robinson, the Court
 19 rules that Ms. Davis' motion is DENIED.

20
 21 IT IS SO ORDERED:

22 Dated this 16th day of April, 2018

23 
 24 Hon. Timothy Williams
 25 District Court Judge
 26 

Submitted by:


David Liebrader, Esq.
Attorney for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26